

1-1 By: Nichols S.B. No. 1730
 1-2 (In the Senate - Filed March 8, 2013; March 25, 2013, read
 1-3 first time and referred to Committee on Transportation;
 1-4 April 8, 2013, reported adversely, with favorable Committee
 1-5 Substitute by the following vote: Yeas 8, Nays 1; April 8, 2013,
 1-6 sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8				
1-9	X			
1-10	X			
1-11		X		
1-12	X			
1-13	X			
1-14	X			
1-15	X			
1-16	X			
1-17	X			

1-18 COMMITTEE SUBSTITUTE FOR S.B. No. 1730 By: Nichols

1-19 A BILL TO BE ENTITLED
 1-20 AN ACT

1-21 relating to comprehensive development agreements of the Texas
 1-22 Department of Transportation or a regional mobility authority.

1-23 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-24 SECTION 1. Subsections (a), (b), (f), (g), (i), (j), (k),
 1-25 and (l), Section 223.201, Transportation Code, are amended to read
 1-26 as follows:

1-27 (a) Subject to Section 223.202, the department may enter
 1-28 into a comprehensive development agreement with a private entity to
 1-29 design, develop, finance, construct, maintain, repair, operate,
 1-30 extend, or expand a:

1-31 (1) toll project;

1-32 (2) state highway improvement project that includes
 1-33 both tolled and nontolled lanes and may include nontolled
 1-34 appurtenant facilities;

1-35 (3) state highway improvement project in which the
 1-36 private entity has an interest in the project; ~~or~~

1-37 (4) state highway improvement project financed wholly
 1-38 or partly with the proceeds of private activity bonds, as defined by
 1-39 Section 141(a), Internal Revenue Code of 1986; or

1-40 (5) nontolled state highway improvement project
 1-41 authorized by the legislature.

1-42 (b) In this subchapter, "comprehensive development
 1-43 agreement" means an agreement that, at a minimum, provides for the
 1-44 design and construction, reconstruction, rehabilitation,
 1-45 expansion, or improvement of a project described in Subsection (a)
 1-46 and may also provide for the financing, acquisition, maintenance,
 1-47 or operation of a project described in Subsection (a).

1-48 (f) The department may enter into a comprehensive
 1-49 development agreement only for all or part of:

1-50 (1) the State Highway 99 (Grand Parkway) project;

1-51 (2) the Interstate Highway 35E managed lanes project
 1-52 in Dallas and Denton Counties from Interstate Highway 635 to U.S.
 1-53 Highway 380;

1-54 (3) the Interstate Highway 35W project in Tarrant
 1-55 County from Interstate Highway 30 to State Highway 114 ~~[North~~
 1-56 ~~Tarrant Express project in Tarrant and Dallas Counties, including:~~

1-57 ~~[(A) on State Highway 183 from State Highway 121~~
 1-58 ~~to State Highway 161 (Segment 2E),~~

1-59 ~~[(B) on Interstate Highway 35W from Interstate~~
 1-60 ~~Highway 30 to State Highway 114 (Segments 3A, 3B, and 3C); and~~

2-1 ~~[(C) on Interstate Highway 820 from State Highway~~
2-2 ~~183 North to south of Randol Mill Road (Segment 4)];~~
2-3 (4) the State Highway 183 managed lanes project in
2-4 Tarrant and Dallas Counties [County] from State Highway 121 [161]
2-5 to Interstate Highway 35E;
2-6 (5) the Interstate Highway 35E/U.S. Highway 67
2-7 Southern Gateway project in Dallas County, including:
2-8 (A) Interstate Highway 35E from 8th Street to
2-9 Interstate Highway 20; and
2-10 (B) U.S. Highway 67 from Interstate Highway 35E
2-11 to Farm-to-Market Road 1382 (Belt Line Road) [State Highway 249
2-12 project in Harris and Montgomery Counties from Spring Cypress Road
2-13 to Farm-to-Market Road 1774];
2-14 (6) the State Highway 288 project from U.S. Highway 59
2-15 to south of State Highway 6 in Brazoria County and Harris County;
2-16 [and]
2-17 (7) the U.S. Highway 290 [~~Hempstead~~] managed lanes
2-18 project in Harris County from Interstate Highway 610 to State
2-19 Highway 99;
2-20 (8) the Interstate Highway 820 project from State
2-21 Highway 183 to Randol Mill Road;
2-22 (9) the State Highway 114 project in Dallas County
2-23 from State Highway 121 to State Highway 183;
2-24 (10) the Loop 12 project in Dallas County from State
2-25 Highway 183 to Interstate Highway 35E;
2-26 (11) the Loop 9 project in Dallas and Ellis Counties
2-27 from Interstate Highway 20 to U.S. Highway 67; and
2-28 (12) the U.S. Highway 181 Harbor Bridge project in
2-29 Nueces County between U.S. Highway 181 at Beach Avenue and
2-30 Interstate Highway 37.
2-31 (g) The department may combine in a comprehensive
2-32 development agreement under this subchapter;
2-33 (1) a toll project and a rail facility as defined by
2-34 Section 91.001; or
2-35 (2) two or more projects described by Subsection (f).
2-36 (i) The authority to enter into a comprehensive development
2-37 agreement expires:
2-38 (1) August 31, 2017, for a project described by
2-39 Subsection (f), other than the State Highway 99 (Grand Parkway)
2-40 project and the State Highway 183 managed lanes project; and
2-41 (2) [expires] August 31, 2015, for the State Highway
2-42 183 managed lanes project.
2-43 (j) Before the department may enter into a comprehensive
2-44 development agreement under Subsection (f), the department must:
2-45 (1) for a project other than the State Highway 99
2-46 (Grand Parkway) project, obtain, not later than August 31, 2017
2-47 [2013], the appropriate environmental clearance;
2-48 (A) for the project; or
2-49 (B) for the initial or base scope of the project
2-50 if the project agreement provides for the phased construction of
2-51 the [for any project other than the State Highway 99 (Grand
2-52 Parkway)] project; and
2-53 (2) present to the commission a full financial plan
2-54 for the project, including costing methodology and cost proposals.
2-55 (k) Not later than December 1, 2014 [2012], the department
2-56 shall provide [present] a report to the commission on the status of
2-57 a project described by Subsection (f). The report must include:
2-58 (1) the status of the project's environmental
2-59 clearance;
2-60 (2) an explanation of any project delays; and
2-61 (3) if the procurement is not completed, the
2-62 anticipated date for the completion of the procurement.
2-63 (l) In this section, "environmental clearance" means:
2-64 (1) a finding of no significant impact has been issued
2-65 for the project or, as applicable, for the initial or base scope of
2-66 the project; or
2-67 (2) for a project for which an environmental impact
2-68 statement is prepared, a record of decision has been issued for that
2-69 project or, as applicable, for the initial or base scope of the

3-1 project.
3-2 SECTION 2. Subsections (a), (c), (e), and (f), Section
3-3 223.2011, Transportation Code, are amended to read as follows:

3-4 (a) Notwithstanding Sections 223.201(f) and 370.305(c), the
3-5 department or an authority under Section 370.003 may enter into a
3-6 comprehensive development agreement relating to improvements to,
3-7 or construction of, all or part of:

3-8 (1) the Loop 1 (MoPac Improvement) project from
3-9 Farm-to-Market Road 734 to Cesar Chavez Street;

3-10 (2) the U.S. 183 (Bergstrom Expressway) project from
3-11 Springdale Road to Patton Avenue; [~~or~~]

3-12 (3) a project consisting of the construction of:
3-13 (A) the Outer Parkway Project in Cameron County
3-14 from U.S. Highway 77/83 to Farm-to-Market Road 1847; and

3-15 (B) the South Padre Island Second Access Causeway
3-16 Project from State Highway 100 to Park Road 100;

3-17 (4) the Loop 49 project from Interstate 20 to U.S.
3-18 Highway 69 (Lindale Relief Route) and from State Highway 110 to U.S.
3-19 Highway 259 (Segments 6 and 7); and

3-20 (5) the Loop 375 Border Highway West project in El Paso
3-21 County from Race Track Drive to Interstate Highway 10.

3-22 (c) Not later than December 1, 2014 [~~2012~~], the department
3-23 or the authority, as applicable, shall provide [~~present~~] a report
3-24 to the commission on the status of a project described by Subsection

3-25 (a). The report must include:

3-26 (1) the status of the project's environmental
3-27 clearance;

3-28 (2) an explanation of any project delays; and

3-29 (3) if the procurement is not completed, the
3-30 anticipated date for the completion of the procurement.

3-31 (e) In this section, "environmental clearance" means:

3-32 (1) a finding of no significant impact has been issued
3-33 for the project or, as applicable, for the initial or base scope of
3-34 the project; or

3-35 (2) for a project for which an environmental impact
3-36 statement is prepared, a record of decision has been issued for that
3-37 project or, as applicable, for the initial or base scope of the
3-38 project.

3-39 (f) The authority to enter into a comprehensive development
3-40 agreement under this section expires August 31, 2017 [~~2015~~].

3-41 SECTION 3. Section 371.101, Transportation Code, is amended
3-42 to read as follows:

3-43 Sec. 371.101. TERMINATION FOR CONVENIENCE.

3-44 (a) A comprehensive development agreement under which a private
3-45 participant receives the right to operate and collect revenue from
3-46 a toll project must contain a provision authorizing the toll
3-47 project entity to terminate the agreement for convenience and to
3-48 purchase, under terms agreed to by the parties:

3-49 (1) the interest of the private participant in the
3-50 comprehensive development agreement; and

3-51 (2) related property, including any interest in a
3-52 highway or other facility designed, developed, financed,
3-53 constructed, operated, or maintained under the agreement.

3-54 (b) A comprehensive development agreement described by
3-55 Subsection (a) must include a price breakdown stating a specific
3-56 price for the purchase of the private participant's interest at
3-57 specified intervals from the date the toll project opens, of not
3-58 less than two years and not more than five years, over the term of
3-59 the agreement.

3-60 (c) The provision must authorize the toll project entity to
3-61 terminate the comprehensive development agreement and to purchase
3-62 the private participant's interest at any time during a specified
3-63 interval at the lesser of:

3-64 (1) the price stated for that interval; or

3-65 (2) the greater of:

3-66 (A) the then fair market value of the private
3-67 participant's interest, plus or minus any other amounts specified
3-68 in the comprehensive development agreement; or

3-69 (B) an amount equal to the amount of outstanding

4-1 debt specified in the comprehensive development agreement, plus or
4-2 minus any other amounts specified in the comprehensive development
4-3 agreement.

4-4 (d) A toll project entity shall include in a request for
4-5 proposals for an agreement described by Subsection (a) a request
4-6 for the proposed price breakdown described by Subsection (b) and
4-7 shall assign points to and score each proposer's price breakdown in
4-8 the evaluation of proposals.

4-9 (e) A private participant shall, not later than 12 months
4-10 before the date that a new price interval takes effect, notify the
4-11 toll project entity of the beginning of the price interval. The
4-12 toll project entity must notify the private participant as to
4-13 whether it will exercise the option to purchase under this section
4-14 not later than six months after the date it receives notice under
4-15 this subsection.

4-16 (f) A toll project entity must notify the private
4-17 participant of the toll project entity's intention to purchase the
4-18 private participant's interest under this section not less than six
4-19 months before the date of the purchase.

4-20 (g) Subsections (b), (c), (d), (e), and (f) do not apply to a
4-21 project for which a request for proposals was issued before January
4-22 1, 2013.

4-23 (h) If a project requires expansion or reconstruction in a
4-24 manner that differs from the manner provided in the original
4-25 project scope or schedule, the price for terminating the
4-26 comprehensive development agreement may be adjusted to reflect the
4-27 changes in the agreement. [A toll project entity having rulemaking
4-28 authority by rule and a toll project entity without rulemaking
4-29 authority by official action shall develop a formula for making
4-30 termination payments to terminate a comprehensive development
4-31 agreement under which a private participant receives the right to
4-32 operate and collect revenue from a toll project. A formula must
4-33 calculate an estimated amount of loss to the private participant as
4-34 a result of the termination for convenience.

4-35 ~~[(b) The formula shall be based on investments,~~
4-36 ~~expenditures, and the internal rate of return on equity under the~~
4-37 ~~agreed base case financial model as projected over the original~~
4-38 ~~term of the agreement, plus an agreed percentage markup on that~~
4-39 ~~amount.~~

4-40 ~~[(c) A formula under Subsection (b) may not include any~~
4-41 ~~estimate of future revenue from the project, if not included in an~~
4-42 ~~agreed base case financial model under Subsection (b).~~
4-43 ~~Compensation to the private participant upon termination for~~
4-44 ~~convenience may not exceed the amount determined using the formula~~
4-45 ~~under Subsection (b).]~~

4-46 SECTION 4. This Act takes effect immediately if it receives
4-47 a vote of two-thirds of all the members elected to each house, as
4-48 provided by Section 39, Article III, Texas Constitution. If this
4-49 Act does not receive the vote necessary for immediate effect, this
4-50 Act takes effect September 1, 2013.

4-51 * * * * *